

MARK J. BENNETT 2672
Attorney General of Hawaii

LEO B. YOUNG 1669
Deputy Attorney General
Department of the Attorney General
State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

'06 MAY 23 P1:31

HAWAII
LABOR RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2005-17
DIRECTOR, DEPARTMENT OF LABOR) (Inspection No. 308486851)
AND INDUSTRIAL RELATIONS,) (OSHC ID: X8851)
)
Complainant,) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
vs.) AND ORDER
)
ARTESAN SERVICES,)
Respondent.)
)
)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant, Director of Labor and Industrial Relations ("Director"), and Respondent, Artesan Services ("Respondent"), having reached a settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about May 3, 2005, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 69-1831 Puako Road, Kamuela, Hawaii 96743.

As a consequence of said inspection, the Director issued a Citation and Notification of Penalty on June 1, 2005 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$750.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 69-1831 Puako Road, Kamuela, Hawaii 96743.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than October 30, 2005; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation is amended as follows:

a. Citation 1 Item 1(a) and Citation 1 Item 1(b) and the "Serious" characterization are affirmed.

b. The Director reduces the aggregate penalty from \$750.00 to \$350.00, which shall be paid in full to the Director of Budget and Finance upon the execution of this Agreement.

6. As consideration for the reduced penalty Respondent, within three-months after the filing of this Agreement, shall enroll in and complete an occupational safety and health training/class conducted by an institution/entity, both of which, must be approved of the Director.

7. If there is a default of any of the terms of this Agreement, the penalty shall revert back to the original amount.

8. Respondent further agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

10. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

12. Unless otherwise provided by this Agreement, nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.


DATED: Honolulu, Hawaii,

5-9-06

APPROVED AS TO FORM:

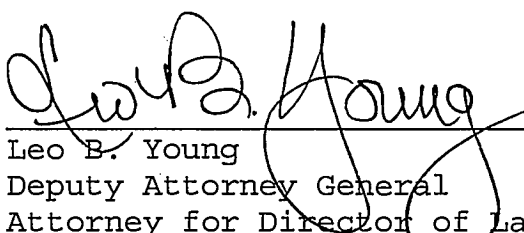
Artesan Services

Counsel for
Artesan Services

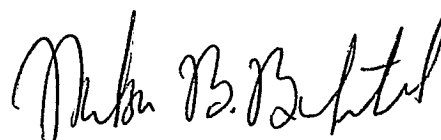


APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



Leo B. Young
Deputy Attorney General
Attorney for Director of Labor
and Industrial Relations,
State of Hawaii

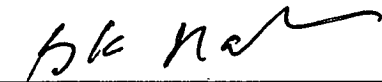


NELSON B. BEFITEL

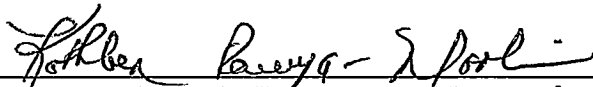
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 190

DATED: May 23, 2006



BRIAN K. NAKAMURA, Chair



KATHLEEN RACUYA-MARKRICH, Member



EMORY J. SPRINGER, Member

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 1680 0004 2962 6563

Citation and Notification of Penalty

To:
Artesan Services
and its successors
P O Box 1989
Hawi, HI 96719

Inspection Number: 308486851 (Charles Clark)

Inspection Date(s): 05/03/2005 - 05/03/2005

Issuance Date: 06/01/2005

OSHCO ID: X8851

Optional Report No.: 06705

Inspection Type: Planned

Scope of Inspection: Comprehensive Inspection

Inspection Site:
69-1831 Puako Rd.
Kamuela, HI 96743

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Exhibit A

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 06/01/2005. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 308486851
Inspection Dates: 05/03/2005 - 05/03/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 06/01/2005

Citation and Notification of Penalty

Company Name: Artesan Services
Inspection Site: 69-1831 Puako Rd, Kamuela, HI 96743

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 1a Type of Violation: **Serious**

29 CFR 1926.304(d) [Refer to chapter 12-127.1, HAR] was violated because:

A Delta Miter saw was missing the guard which exposed the operators to have contact with the rotating blade.

29 CFR 1926.304(d) states "All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work. When the tool is withdrawn from the work, the lower guard shall automatically and instantly return to the covering position."

Location: First floor

Date By Which Violation Must be Abated:
Penalty:

06/06/2005
\$750.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 308486851
Inspection Dates: 05/03/2005 - 05/03/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 06/01/2005

Citation and Notification of Penalty

Company Name: Artesan Services
Inspection Site: 69-1831 Puako Rd, Kamuela, HI 96743

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1926.304(g)(1) [Refer to chapter 12-127.1, HAR] was violated because:

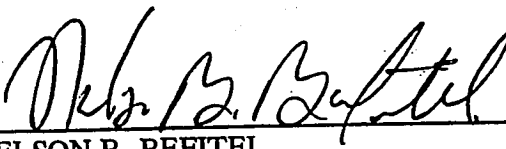
A Dewalt 770 Deluxe Radial Arm Saw was missing the lower blade guard which exposed the operators to injuries due to accidental contact with the rotating blade.

29 CFR 1926.304(g)(1) states "The upper hood shall completely enclose the upper portion of the blade down to a point that will include the end of the saw arbor. The upper hood shall be constructed in such a manner and of such material that it will protect the operator from flying splinters, broken saw teeth, etc., and will deflect sawdust away from the operator. The sides of the lower exposed portion of the blade shall be guarded to the full diameter of the blade by a device that will automatically adjust itself to the thickness of the stock and remain in contact with stock being cut to give maximum protection possible for the operation being performed."

Location: Site

Date By Which Violation Must be Abated:

06/06/2005


NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Artesan Services
Inspection Site: 69-1831 Puako Rd
Kamuela, HI 96743
Issuance Date: 06/01/2005

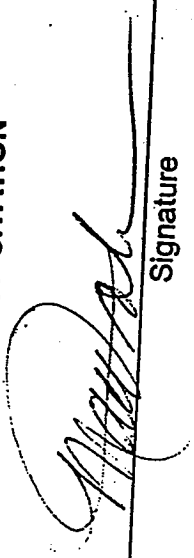
Summary of Penalties for Inspection Number 308486851

Citation 01, Serious	=	\$750.00
TOTAL PENALTIES	=	\$750.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

ACKNOWLEDGEMENT OF RECEIPT
OF CITATION


Signature
6-21-05
Date

Artesan Services
Establishment Name/Inspection #
Inspection Date(s): 5/3/05 - 5/3/05
OSHC #: X8851

Return this Receipt to:
Department of Labor & Industrial Relations
830 Punchbowl Street, Room 425
Honolulu, Hawaii 96813

Phone: (808) 586-9086

ABATEMENT CERTIFICATION

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Artesan Services
P O Box 1989
Hawi, HI 96719

The hazard referenced in Inspection Number 308486851 for the violation identified as Citation 01 and item 001a was corrected on _____.
How corrected: Repaired w/ safety glasses

The hazard referenced in Inspection Number 308486851 for the violation identified as Citation 01 and item 001b was corrected on _____.
How corrected: Removed from site

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.


Signature

MAAT TBLU
Type or Printed Name